**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 2507 of 1999**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MAHERBAI WD/O. SHAPURJI MERVANJI SAHER & 4 - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**
MR HM JADEJA for Petitioners
MR DIPEN DESAI AGP for Respondent Nos.1 to 3.

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 13/06/2007**

**ORAL JUDGMENT**

1. Mr.H.M. Jadeja, learned counsel for the petitioners and Mr.Dipen Desai, learned Assistant Government Pleader for the State.

2. By this writ application under Article 226/227 of the Constitution of India, the petitioners are challenging order dtd.17/8/1994 passed by the Collector, Valsad in Case No.CH/Land/Vashi/3698 of 1994 rejecting petitioners' application for settlement of the land in favour of the petitioners and order dtd. 21/12/1998 passed by the Dy. Secretary, Revenue Department (Appeals) in Case No.SRD/Land/Valsad/3 of 1995.

3. Facts necessary for disposal of the present matter are that one Shapurji Mervanji Saher - predecessor-in-title of the petitioners had taken loans from Gujarat State Cooperative Agricultural and Rural Development Bank, Vasda Branch and created charge over their land bearing Survey Nos.823, 951 and 952 of Village Vandarvela, Tal. Vasda, Dist. Valsad. As the loan amounts were not paid back, the Bank took up recovery proceedings and in the said recovery proceedings, Special Recovery Officer issued notice on 23/3/1980 (Annexure-A), advertising sale of the above referred three parcels of land. At the time of the auction, none appeared to take part in the auction proceedings,

therefore, the State Government purchased the land and Mamlatdar, Valsad purchased the land as a representative of the Gujarat State. On 22/2/1980, Shapurji expired, but it would be necessary to note that since after 8/5/1980 upto the date of his death, he did not challenge the correctness, validity and propriety of the auction proceedings. According to the petitioners, from the Village Form No.7/12, it would clearly appear that despite Mutation Entry No.2051 reflecting purchase of the land by the Government, the petitioners continued to be in possession.

4. Somewhere in the year 1994, Mamlatdar, Vasda issued notices to the petitioners for taking appropriate action under sec. 61 of the Bombay Land Revenue Code. It appears that thereafter on 28/3/1994, the petitioners made an application to the Collector for allotment / settlement of the land in favour of the petitioners. On 17/8/1994, vide order at Annexure-E, the Collector rejected the application and thereafter, vide order dtd.21/12/1998 (Annexure-F), Revision Application No.3 of 1995, preferred by the petitioners, was also dismissed by the State Government. According to the petitioners,

somewhere in the year 1994, they had paid all the dues of the Bank and thereafter also obtained a certificate from the agent of the Bank that there was no outstanding.

5. Mr.H.M. Jadeja, learned counsel for the petitioners submits that present is a case of illegal auction and in view of the judgment of the Supreme Court in the matter of Ramrao Jankiram Kadam Vs. State of Bombay and others, A.I.R. 1963 S.C. 827, this Court should look into the auction, its validity and set aside all the proceedings with a direction to the State Government to allot the land in favour of the petitioners. It is also submitted by Mr.Jadeja, learned counsel for the petitioners that despite the purchase of the land, the State Government did not discharge the liability and in the Bank Account, dues were shown against the petitioners which would mean that auction conditions were not observed. His further submission is that as all the dues were liquidated on 28/2/1994, the petitioners would be entitled to allotment of the land. He, however, admits that the auction proceedings were never challenged nor are challenged in this writ application.

6. Mr.Dipen Desai, learned Assistant Government Pleader for the State has opposed the writ application.

7. True it is that in the matter of Ramrao Jankiram Kadam (Supra), the Supreme Court has observed that in absence of other bidders, a purchase by the State Government for a nominal price, would not amount to a sale by public auction under sec.167 of the Bombay Land Revenue Code. The said judgment, unfortunately, would not help the petitioners, because the auction which was conducted in the year 1980 was not challenged either by deceased Shapurji or the present petitioner. In the year 1994, the petitioner accepting the State Government to be the owner of the property, made an application for allotment of the land. An application for allotment of the land cannot be made to a person who is either in illegal possession or has obtained possession in void sale. An application for allotment would always be made to a person who holds absolute right, title and interest in the property and has power of disposition, transfer and alienation. Petitioners' making of the application on 28/3/1994 would speak against the petitioners and would compel this Court to believe that

upto the year 1994, the petitioners did not challenge the correctness, validity and propriety of the auction and accepted that the Government had become owner of the property.

8. So far as the liquidation of the dues by the petitioners in the year 1994 are concerned, the same would also not make any difference, because, nobody knows that what were the total dues or for what the property was sold and whether the State Government accepted complete liability to liquidate the dues. Be that as it may. Once, the property is auctioned, then, the petitioners lost their title and were not entitled to claim anything in the land. Their possession in the year 1980 or upto the year 1994 would also not provide them any solace, because, they would be deemed to be persons in illegal possession.

9. As a last resort, Mr.Jadeja, learned counsel for the petitioners submitted that the matter be remanded to the Collector so that the petitioners may persuade the Collector to allot land in their favour on petitioners' submission that the petitioners have liquidated the dues of the Bank and allotment of the land to the petitioners would not cause any loss to the State Government.

10. In the opinion of this Court, the petitioners have not shown any legal right for allotment of the property for invocation of Article 226 of the Constitution of India. So far as application of Article 227 of the Constitution of India is concerned, this Court does not find any error apparent on the face of the record and for this reason, this Court is unable to interfere in the matter. The Collector was justified in rejecting the application and the revisional authority, for the reasons stated in its order, in the opinion of this Court did not call err in dismissing the revision.

11. The petition deserves to and is accordingly dismissed. The State would be free to take appropriate actions in the matter. Rule is discharged. Interim relief, if any, is vacated.

(R.S. GARG, J.)

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